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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,480	01/06/2004	Masaya Ohiro	2038-315	3553

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EXAMINER

GRAY, LINDA L

ART UNIT PAPER NUMBER

1734

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/751,480

Applicant(s)

OHIRO ET AL.

Examiner

Linda L. Gray

Art Unit

1734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE threew MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2004 and 08 June 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**Detailed Action**

**Claim Rejections - 35 USC 112**

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the application regards as his invention.

2. **Claim 1-4 are rejected under 5 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

**Claim 2**, "the second web" (L 3) lacks antecedent basis.

**Claims 3-4**, use of "open-type" (c 2, L 2) and "pants-type" (c 4, L 3) renders claims 3 and 4 indefinite in that it is unclear of the diapers are open diapers (c 3) and pant diapers (c 4), or if the diapers are "like" open diapers and pant diapers. The limits of the claim are unclear.

**Claim 1** is indefinite in that the process forms a cut first web but does not have a diaper forming step to manipulate cut web 10 into the diaper.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. **Claims 1-4 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for feeding continuously a first web in a traverse direction where the first web defines the garment facing surface, does not reasonably provide enablement for the first web including a plurality of backsheets having a pair of side edges and successively connected one to another along the side edges. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims.**

Specifically, the specification and drawings demonstrate feeding a web (Fig 5); however, the claimed limitation of this web including a plurality of backsheets having a pair of side edges being successively connected one to another along the side edges is not discussed or shown in the drawings. In Figure 5, line A is an imaginary line demarking a plurality of backsheets having side edges. However, the web is not divided into a plurality of these backing sheets via bonding along imaginary line A.

**Claim Rejections - 35 USC 103**

**5.** The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**6. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fernfors (US 6,328,725 B2) in view of Laplanche (US 4,237,890) or Kozak (US 3,874,386).**

**Claim 1**, Fernfors teaches feeding continuous web 1 in a traverse direction where Figure 1 10 includes a plurality of backing sheets which defining a garment facing surface and separated at line 3. The sheets each have a pair of side edges at line 3. This portion of the rejection is written in view of the rejection under 35 USC 112, first paragraph, above.

Fernfors feeds fastener members 8 to web 1 and bonds members 8 to the garment facing surface of one of a front and rear waist region of the sheets so that members 8 straddle the edges. Members 8 are bonded an adhesive which would be on the bottom surface. Then web 1 is

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cut with members 8 along the edges. Members 8 are shown as having a traverse middle and longitudinally opposite ends.

See Figure 3 of Fernfors where the product make is diaper having a wearer's body facing surface and the garment facing surface, front and rear ends in the transverse direction, the side edges on a longitudinal direction, the front waist region, the rear waist region, a crotch region between the waist regions, members 8 on the garment facing surface near one of the waist regions in the area of the edges.

**Claim 1**, *Fernfors does not teach members 8 to be folded at both ends in a z-shape or inverted z-shape with top and bottom sections coated on the under surface with the adhesive.*

However, such fastener members are conventional in the diaper art as demonstrated by Laplanche and Kozak each teach a diaper fastener member folded at both ends in a z-shape with top and bottom sections coated on the under surface with and adhesive where the bottom surface is bonded to the waist regions of the diapers.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Fernfors that members 8 be, instead, folded at both ends in a z-shape or inverted z-shape with top and bottom sections coated on the under surface with the adhesive because such fastener members are conventional in the diaper art as demonstrated by Laplanche and Kozak and it is obvious to replace one fastener with another art recognized alternative fastener used in the same art.

**Claim 2**, Fernfors teaches web 1 includes impervious back sheet 28 overlaid with a pervious top sheet 28 which is continuous in the transverse direction and forms the wearer's body facing surface. There is also provided liquid-absorbent core 4 arranged intermittently in the feeding direction of sheets 28 and therebetween sheets 28.

**Claim 3**, impervious back sheet 28 defines the garment facing surface of the diaper which can be opened and then closed again via members 8.

**Allowable Subject Matter**

**7. Claim 4 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.**

**8. The following is a statement of reasons for the indication of allowable subject matter:**

**claim 4**, Fernfors teaches that web 1 is destined to be both the garment and wearer's facing surfaces of the diaper which is in pant form when worn. Web 1 is folded back along a line bisecting a vertical dimension of web 1 (Fig 1 to Fig 2) so that a region of web 1 that forms the front waist region and that forms the rear waist region are directly overlaid. Folded web 1 is joined together at zones 16 of the edges of the diaper. However, Fernfors does not teach that after folding and joining, members 8 are applied in that Fernfors teaches bonding member 8 prior to folding where members 8 are also joined at 16 (Fig 5) where bonding members 8 after folding and bonding at 16 would eliminate members 8 from being part of the bonding at 16 and thus destroy the process and product taught by Fernfors.

**9. As allowable subject matter has been indicated, Applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See CFR 1.111(b) and MPEP 707.07(a).**

**Conclusion**

**10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linda L. Gray whose telephone number is (571) 272-1228. The examiner can normally be reached on Monday-Friday, 9:00am to 5:00pm.**

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached on (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

llg

June 24, 2005

*Linda L. Gray*  
LINDA GRAY  
PRIMARY EXAMINER